IN THE HIGH COURT OF DELHI

C.R.P.No. 597/2001

Raj Pal Singh ..... Petitioner
! through: Mr. R.V.Nair, Advocate and
Mr. A.Siddique, Advocate

VERSUS

$ M.C.D. ..... Respondent
^ through: Ms. Amita Gupta, Advocate

% DATE OF DECISION: 21.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**(Oral)
*

1. Petitioner was the plaintiff. His suit was decreed ex-parte. A composite application under Order 9 Rule 13 of the CPC read with Section 5 of the Limitation Act was filed by the MCD praying that the ex-parte decree dated 7.7.1999 be recalled and the corporation be permitted to defend the suit on merits.

2. The suit filed by the petitioner challenged the penalty of reduction to the lower rank which was imposed after inquiry officer found that the petitioner, a male nurse, had tried to outrage the modesty of a colleague female nurse by grasping her

breast.

3. Explaining reasons as to why the MCD could not appear after it was served it was pleaded that one J.P.Dixit a panel lawyer had been entrusted with the brief. The written statement was duly drafted and was filed but for unexplainable reasons the lawyer stopped appearing. That when decree was put into execution the counsel concerned moved an application under Section 47 CPC raising objections to the decree. It was only thereafter that MCD realize that their counsels were behaving in a most unprofessional manner by doing what they did. It was stated that being a statutory body MCD had to act through living human beings. The gravity of the misconduct of the petitioner was pointed out in the application with prayer that the ex-parte decree be set aside.

4. Learned Trial Judge has noted the delay. Learned Trial Judge has also noted that in between the decree was put into execution and objections thereto were filed but has opined that MCD should not suffer due to lack of professional diligence by the counsel engaged by the MCD. Learned Trial Judge has noted the decision of the Supreme Court reported as *State of Haryana Vs. Chandramani* (1996) 3 SCC 132.

5. The view taken by the learned Trial Judge cannot be called perverse.

6. The petition invokes remedy under Section 115 CPC.

7. Unless it is shown that the view taken by the learned Trial Judge is perverse or that the learned Trial Judge has acted with material irregularity or that the impugned order, if allowed to stay, would occasion a miscarriage of justice it would be impermissible for this court to intervene under its revisional jurisdiction.

8. No such infirmity has been shown.

9. The petition is dismissed.

10. Since considerable time has been consumed due to pendency of the civil revision petition learned Trial Judge would expedite hearing in the suit.

11. No costs.

November 21, 2007 **PRADEEP NANDRAJOG, J.**
mm